

# EXHIBIT 31

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION MDL NO. 1456

THIS DOCUMENT RELATES TO:  
ALL CLASS ACTIONS MASTER FILE NO. 01-CV-12257-PBS

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND  
FOR THE COUNTY OF MARICOPA

ROBERT J. SWANSTON, INDIVIDUALLY AND  
ON BEHALF OF HIMSELF AND ALL  
OTHERS SIMILARLY SITUATED PLAINTIFF

VERSUS NO. CV2002-004988

TAP PHARMACEUTICAL PRODUCTS,  
INC.; ET AL. DEFENDANTS

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DEPOSITION OF MICKEY BROWN

\*\*\*\*\*

APPEARANCES NOTED HEREIN  
TAKEN AT INSTANCE OF: DEFENDANTS

DATE: MARCH 9th, 2005  
PLACE: BRUNINI, GRANTHAM, GROWER & HEWES  
POST OFFICE DRAWER 119  
JACKSON, MISSISSIPPI 39205-0119  
TIME: 10:00 a.m.

Page 126

1 answer that because I'm not faced with that  
2 decision.

3 I don't know how -- I don't know that the  
4 practice happens or is prevalent or how that affects  
5 what is fair and reasonable. All of those questions  
6 would have to be answered before I think I could  
7 answer the question that you've asked.

8 MR. MANGI: (Continuing.)

9 Q Do you know whether or not physicians  
10 contract in any cases with manufacturers to get  
11 rebates and discounts on drugs?

12 A I don't have any idea.

13 Q Now, I believe you agreed earlier that  
14 acquisition costs for drugs could vary from  
15 physician to physician, correct?

16 A I think what I said is that I didn't  
17 know whether it did or didn't. My assumption would  
18 be that it does. But I don't know whether it does  
19 or doesn't.

20 Q Well, certainly, we can agree that the  
21 AWP for any given drug bears no fixed relationship  
22 to acquisition costs for that drug, correct?

Page 127

1 A As I've said before, I don't know where  
2 average wholesale price comes from. So the relation  
3 of average wholesale price to acquisition cost is  
4 not something that I'm familiar with. So I don't  
5 know that I can agree or disagree with your  
6 statement.

7 Q Then it's certainly fair to say you have  
8 no particular expectation that there will be a fixed  
9 relationship between AWP and acquisition cost?

10 MS. FEGAN: Objection to form.

11 A Average wholesale price is a point of  
12 reference that we use. It's relation to acquisition  
13 cost, I'm not familiar with. So, I mean, I don't  
14 have an expectation one way or the other on that.

15 MR. MANGI: (Continuing.)

16 Q Certainly, you don't have an expectation  
17 that acquisition costs will be 20 percent less than  
18 AWP, 40 percent, 80 percent. You just have no  
19 expectation at all about that; is that a fair  
20 statement?

21 MS. FEGAN: Objection to form.

22 A I mean, I -- all I can -- all I can

Page 128

1 answer to answer honestly is I have no understanding  
2 of the relation between the two. And to speculate  
3 on, you know, what is and what isn't the  
4 relationship, I'm not comfortable doing.

5 MR. MANGI: (Continuing.)

6 Q So it's fair to say, then, certainly you  
7 have no expectation of what the relationship is  
8 either, correct?

9 A I think it's fair to say I don't know  
10 what the relationship between the two is. And we  
11 strictly use AWP as a point of reference, and that's  
12 really all I feel comfortable responding to.

13 Q On a separate note, you mentioned that  
14 CMS fee schedules are used as a point of reference  
15 in generating your fee schedules, correct?

16 A I said it is another source that we look  
17 at just so that we have an understanding of what's  
18 going on in the marketplace. It's not a point of  
19 reference in the same sense that average wholesale  
20 price is. Our -- our reimbursement is not based on  
21 what Medicare's reimbursement is.

22 Q Do you -- does Blue Cross/Blue Shield of

Page 129

1 Mississippi act as a Medicare carrier?

2 A Blue Cross/Blue Shield of Mississippi  
3 has a subsidiary company called Tri-span that is a  
4 part A intermediary.

5 Q Are you involved at all with the  
6 activities of Tri-span?

7 A I am not.

8 Q Does Blue Cross/Blue Shield of  
9 Mississippi offer any Medigap or Medigap or other  
10 supplement insurance?

11 A We offer Medicare supplement policies.

12 Q And is that -- are those policies  
13 intended to cover the copayment due from Medicare  
14 beneficiaries?

15 A I think I mentioned before that I'm not  
16 an expert on benefit plans, and I -- I'm even less  
17 an expert on Medicare supplements. It's my  
18 understanding that those are standardized plans,  
19 that the government standardized those plans, and we  
20 apply whatever those standard benefits are. But  
21 what those are, I have no idea.

22 Q So you don't know what percentage of the

# **EXHIBIT 32**

Niebylski, M.D., Bruce M.

June 30, 2006

Detroit, MI

Page 1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL MDL DOCKET NO.  
INDUSTRY AVERAGE WHOLESALE CIVIL ACTION  
PRICE LITIGATION 01CV12257-PBS

\_\_\_\_\_  
THIS DOCUMENT RELATES TO:  
ALL ACTIONS

\_\_\_\_\_

D E P O S I T I O N

DEPONENT: Bruce M. Niebylski, M.D.

DATE: Friday, June 30, 2006

TIME: 9:49 a.m.

LOCATION: Feikens, Stevens, Kennedy & Galbraith, P.C.

First National Building

660 Woodward Avenue, Suite 700

Detroit, Michigan 48226

REPORTER: Michele E. French, CSR-3091, RMR, RPR, CRR

Niebylski, M.D., Bruce M.

June 30, 2006

Detroit, MI

Page 70

1 Q. Was it your understanding that physicians'  
2 acquisition prices for drugs that generated these  
3 potential margins were the same for all drugs or  
4 varied from drug to drug?

5 A. I knew it was different than what AWP was  
6 and I really didn't care how much different because  
7 for the most part we were reimbursing for IVs and  
8 things like that where we would pay, say, a hundred  
9 dollars, and if they were making an extra 10 or \$20  
10 per IV bag, and I thought that's fine. I'm all for  
11 physicians trying to make a living.

12 When the cost of a drug in some cases is  
13 \$10,000, making a thousand dollars for a half hour  
14 of work didn't seem fair.

15 Q. Well, was it your impression that the  
16 percentage of margin was the same in every case or  
17 that the percentage was different?

18 A. I just figured it depended on where the  
19 physician was buying the drug from.

20 Q. In other words, in some instances  
21 physicians could get a different discount or rebates  
22 versus other --

Page 71

1 A. I had no idea what they were able to buy  
2 for. I just assumed that -- I had no idea what kind  
3 of margin they were making, only I heard that they  
4 were making a margin.

5 Q. Did you have and have you at any time at  
6 HAP had any particular expectation as to what  
7 physicians' acquisition cost for drugs are in  
8 relation to reimbursement?

9 A. I don't know. That's -- that hasn't been  
10 a concern of mine.

11 Q. Okay. So if one were to say that, well,  
12 your expectation is that acquisition costs will be  
13 20 percent, 30 percent, 50 percent, something more,  
14 something less, a specific number in relation to  
15 reimbursement amounts, would that be inaccurate?

16 MR. WILLIAMS: Objection to form.

17 THE WITNESS: I haven't had any  
18 expectations what their margin would be.  
19 BY MR. MANGI:

20 Q. When you considered the use of specialty  
21 pharmacies in this 2003 time period, were you  
22 looking at only Bioscript or did you consider

Page 72

1 different vendors?

2 A. I had asked our PBM, physician benefit  
3 manager, is MedImpact in San Diego, and I had asked  
4 them if they could do some utilization controls for  
5 us. They said no, but they got me in touch with  
6 Bioscripts as a vendor that they had heard good  
7 things about.

8 Q. Does MedImpact contract with retail  
9 pharmacies on HAP's behalf in relation to self-  
10 administered drugs?

11 A. No. All MedImpact does is pay our claims  
12 to the pharmacies. They don't negotiate or anything  
13 else.

14 Q. Now, they put you in touch with Bioscript.  
15 Did you talk to any other specialty pharmacy vendors  
16 or just Bioscripts?

17 A. No, just Bioscripts.

18 Q. Were you the person in charge of those  
19 initial discussions with Bioscript?

20 A. Yes.

21 Q. And what was Bioscript offering?

22 A. They were offering delivery of the

Page 73

1 medication within one business day to either the  
2 physician office or to the patient home, and in  
3 return they were asking for reimbursement of 15  
4 percent below AWP.

5 Q. Was -- was the arrangement that HAP would  
6 pay Bioscript 15 percent below AWP?

7 A. Yes.

8 Q. And did HAP have an understanding as to  
9 what Bioscript was paying to acquire those drugs?

10 A. No.

11 Q. So, in other words, it would be safe to  
12 say you assumed they were getting the drugs for less  
13 than you were paying them?

14 A. They were probably making some money in  
15 this whole thing.

16 MR. STEVENS: Bruce, would you do this.  
17 While it is normally in conversation that you  
18 respond, because you know what he's asking midway  
19 through, her fingers are going to fall off if we do  
20 this all day and we're both talking at the same  
21 time, so if you would just give a beat once he  
22 finishes.

19 (Pages 70 to 73)

# **EXHIBIT 33**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 \*\*\*\*\*

4 IN RE PHARMACEUTICAL INDUSTRY ) MDL NO. 1456

5 AVERAGE WHOLESALE PRICE ) CIVIL ACTION:

6 LITIGATION ) 01-CV-12257-PBS

7 -----) JUDGE PATTI B. SARIS

8 THIS DOCUMENT RELATES TO ALL )

9 CLASS ACTIONS )

10 \*\*\*\*\*

11  
12 30(b)(6) DEPOSITION OF PIPEFITTERS

13 LOCAL UNION 537 through CHARLES HANNAFORD, a

14 witness called on behalf of Bristol-Myers

15 Squibb, pursuant to the Federal Rules of

16 Civil Procedure, before Kristin Kelley, a

17 Registered Professional Reporter and Notary

18 Public in and for the Commonwealth of

19 Massachusetts, at the offices of Hagens

20 Berman Sobol Shapiro, LLP, One Main Street,

21 Cambridge, Massachusetts, on Thursday,

22 December 29, 2005, commencing at 9:56 a.m.



Charles Hannaford

December 29, 2005

Cambridge, MA

<p style="text-align: right;">Page 10</p> <p>1 aerospace to pipefitters?</p> <p>2 A. I was a teacher in pipefitting in math.</p> <p>3 Q. What I'm trying --</p> <p>4 A. I did have formal education. I did a</p> <p>5 five year apprenticeship program with the</p> <p>6 pipefitters.</p> <p>7 Q. When was that?</p> <p>8 A. 1974. It was four years. Sorry. They</p> <p>9 changed it to four. 1974 to 1979.</p> <p>10 Q. What were you doing between 1970 and</p> <p>11 1974 after you got your master's from USC and</p> <p>12 before the program at Purdue?</p> <p>13 A. I had several different jobs. I worked</p> <p>14 for an air freight company. I worked for a small</p> <p>15 airline in Hawaii until I joined the pipefitters.</p> <p>16 Q. When you say join the pipefitters, was</p> <p>17 that became a union member?</p> <p>18 A. Became an apprentice.</p> <p>19 Q. That year was what?</p> <p>20 A. '74.</p> <p>21 Q. Where were you apprenticing?</p> <p>22 A. In Boston.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Let's concentrate on your</p> <p>2 apprenticeship. How long did that last, 1974 to</p> <p>3 when?</p> <p>4 A. '79.</p> <p>5 Q. All that time you were working during</p> <p>6 the day and you were going to school at night?</p> <p>7 A. Correct.</p> <p>8 Q. And the school was Dorchester?</p> <p>9 A. Correct.</p> <p>10 Q. What kind of jobs did you work on during</p> <p>11 that time period?</p> <p>12 A. I worked for mainly a control company,</p> <p>13 such as Johnson Controls and Honeywell. I would</p> <p>14 work in a particular building putting in</p> <p>15 temperature controls, such as the thermostat that</p> <p>16 you would see on a building.</p> <p>17 Q. At a certain point during your</p> <p>18 apprenticeship did you become entitled to health</p> <p>19 benefits?</p> <p>20 A. Correct.</p> <p>21 Q. When was that?</p> <p>22 A. 600 hours after I started.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. For whom?</p> <p>2 A. The pipefitters local union 537.</p> <p>3 Q. The present entity with which you're</p> <p>4 affiliated?</p> <p>5 A. Correct.</p> <p>6 Q. At that time you were apprenticing as a</p> <p>7 pipefitter. What does a pipefitter do? What does</p> <p>8 an apprentice pipefitter do?</p> <p>9 A. I would work on building systems, HVAC,</p> <p>10 heating ventilation air conditioning. Apprentice</p> <p>11 means that you're entry level. You would learn the</p> <p>12 systems and go to school. You work during the day</p> <p>13 and go to school at night.</p> <p>14 Q. The school you took was at Purdue?</p> <p>15 A. No.</p> <p>16 Q. Where was it?</p> <p>17 A. It was in Dorchester.</p> <p>18 Q. Maybe I was confused.</p> <p>19 A. After I became an instructor when I</p> <p>20 graduated apprenticeship school I became an</p> <p>21 instructor at the school and then I started</p> <p>22 attending Purdue and Ann Arbor.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. How does that translate into time?</p> <p>2 A. About six months into the apprenticeship</p> <p>3 period.</p> <p>4 Q. This was some time in 1974, 1975?</p> <p>5 A. Right. I started in -- actually, I</p> <p>6 started early. Probably around July. I would</p> <p>7 have become eligible for benefits in the union</p> <p>8 approximately six months later, somewhere around</p> <p>9 the first of the year.</p> <p>10 Q. What kind of benefits did your union</p> <p>11 offer at that time?</p> <p>12 A. Health and welfare, pension. There</p> <p>13 wasn't any annuity.</p> <p>14 Q. Under the health and welfare was there a</p> <p>15 major medical program?</p> <p>16 A. Yes.</p> <p>17 Q. Who was that offered through?</p> <p>18 A. At that time it was Aetna, Aetna</p> <p>19 Insurance.</p> <p>20 Q. Did it at some point switch to Blue</p> <p>21 Cross Blue Shield of Massachusetts?</p> <p>22 A. That is correct.</p>

4 (Pages 10 to 13)

Charles Hannaford

December 29, 2005

Cambridge, MA

<p style="text-align: right;">Page 14</p> <p>1 Q. When?</p> <p>2 A. Approximately a couple of years later.</p> <p>3 Q. Sometime before 1979?</p> <p>4 A. Yes.</p> <p>5 Q. From that point forward has the union</p> <p>6 continuously offered major medical benefits?</p> <p>7 A. Yes.</p> <p>8 Q. Has it always been through Blue Cross</p> <p>9 Blue Shield of Massachusetts?</p> <p>10 A. Yes.</p> <p>11 Q. Going back to your employment history.</p> <p>12 We went through your apprenticeship. In 1979</p> <p>13 where did you go at that time?</p> <p>14 A. I worked for Honeywell Controls.</p> <p>15 Q. On a full-time basis?</p> <p>16 A. Correct.</p> <p>17 Q. Where was that located?</p> <p>18 A. The home office was in Newton.</p> <p>19 Q. How long were you with Honeywell?</p> <p>20 A. Approximately five years.</p> <p>21 Q. Until approximately 1984?</p> <p>22 A. Approximately.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Or Reserve?</p> <p>2 A. Air Force Reserve.</p> <p>3 Q. Was that both times that you were absent</p> <p>4 with the Air Force Reserve?</p> <p>5 A. No.</p> <p>6 Q. One time was for Desert Storm?</p> <p>7 A. Yes.</p> <p>8 Q. The other time was?</p> <p>9 A. I went to work at a pharmaceutical</p> <p>10 company, constructing a pharmaceutical, Genzyme.</p> <p>11 Q. You were building their building?</p> <p>12 A. The building.</p> <p>13 Q. Which was located where?</p> <p>14 A. Right on the Charles River.</p> <p>15 Q. For a brief period of time you left the</p> <p>16 employ of Carrier and were employed by Genzyme?</p> <p>17 A. No. Employed by the union working at</p> <p>18 the Genzyme site. Actually, I worked for Hart</p> <p>19 Engineering.</p> <p>20 Q. For how long were you on that project?</p> <p>21 A. About six months. I left one other</p> <p>22 time. I worked for J. Mont Management Company. I</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. What type of work were you doing for</p> <p>2 Honeywell?</p> <p>3 A. Temperature controls.</p> <p>4 Q. What was your next position?</p> <p>5 A. I went to Carrier Air Conditioning.</p> <p>6 Q. Still in the Boston area?</p> <p>7 A. Yes.</p> <p>8 Q. What did you do for Carrier?</p> <p>9 A. Temperature controls and refrigeration.</p> <p>10 Q. For how long was that?</p> <p>11 A. It spanned 18 years but I left them</p> <p>12 twice.</p> <p>13 Q. Roughly from 1984 to 1992, right? I'm</p> <p>14 sorry. To 2002?</p> <p>15 A. Yes. No. It was probably '83 or '84 to</p> <p>16 about 2001.</p> <p>17 Q. You say there was some gaps. Where did</p> <p>18 you go during those gaps?</p> <p>19 A. To war. I got activated for Desert</p> <p>20 Storm.</p> <p>21 Q. You're a member of the National Guard?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>1 was the chief engineer for downtown office</p> <p>2 buildings, but I was still in the union.</p> <p>3 Q. I'm going to assume that for all this</p> <p>4 time you were a union member.</p> <p>5 A. Absolutely.</p> <p>6 Q. What you had was different employers</p> <p>7 over time?</p> <p>8 A. We're called the multiemployer trust so</p> <p>9 that we're a Taft-Hartley multiemployer trust.</p> <p>10 Q. But now we're edging over into the</p> <p>11 benefits area. I'm just talking now about your</p> <p>12 employment, who you received your paycheck from. I</p> <p>13 assume that first you were receiving it from</p> <p>14 Carrier?</p> <p>15 A. Correct.</p> <p>16 Q. At some point it now sounds like at one</p> <p>17 point you were receiving a check from probably the</p> <p>18 U.S. government as an Air Force Reserve?</p> <p>19 A. Correct.</p> <p>20 Q. You were also receiving a check from</p> <p>21 Hart Engineering at a different time?</p> <p>22 A. Correct.</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 22</p> <p>1 Q. That would be roughly from 1979 to 1984</p> <p>2 that you were doing that?</p> <p>3 A. Approximately.</p> <p>4 Q. Then you continued on through 2001 by</p> <p>5 virtue of your right as --</p> <p>6 A. I didn't go every year but I did most</p> <p>7 years.</p> <p>8 Q. Most years it was a one week period?</p> <p>9 A. Right. 40 hours of instruction.</p> <p>10 Q. Have we cleaned you out on your</p> <p>11 postgraduate school educational experience?</p> <p>12 A. Yes.</p> <p>13 Q. Did any of this postgraduate education</p> <p>14 experience involve the issue of health benefits?</p> <p>15 A. I guess you haven't cleared me out of</p> <p>16 all my postgraduate because I attend conferences</p> <p>17 in my present position and the International</p> <p>18 Foundation.</p> <p>19 Q. Of Employee Benefit Plans?</p> <p>20 A. Yes.</p> <p>21 Q. Are you a member of that association?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I did not, no.</p> <p>2 Q. Did you do some training once you got</p> <p>3 that position?</p> <p>4 A. Correct.</p> <p>5 Q. When was that?</p> <p>6 A. I attended conferences each year at the</p> <p>7 International Foundation.</p> <p>8 Q. Starting in 2000 and what?</p> <p>9 A. Two, 2002.</p> <p>10 Q. What type of conferences?</p> <p>11 A. They were for administrator of trust</p> <p>12 funds.</p> <p>13 Q. Did you have to travel some place to go</p> <p>14 to those?</p> <p>15 A. Yes.</p> <p>16 Q. Where is that?</p> <p>17 A. One was Toronto. One was San Diego. One</p> <p>18 was New Orleans. One was Hawaii.</p> <p>19 Q. Why don't you take us through the</p> <p>20 transition then. It sounds like you ended with</p> <p>21 Carrier in 2001.</p> <p>22 A. I worked for another shop, Intel. I</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Since when?</p> <p>2 A. 2002.</p> <p>3 Q. Let's break it up then.</p> <p>4 A. I attended a school for them.</p> <p>5 Q. Between 1979 and 2001, let's focus on</p> <p>6 that time period, did we get all of your</p> <p>7 postgraduate educational experience?</p> <p>8 A. Yes. I think.</p> <p>9 Q. Now, if we go past that you say you got</p> <p>10 some educational experience in other areas?</p> <p>11 A. Do you consider Air Force schools?</p> <p>12 Q. Are they mostly in flight training?</p> <p>13 A. I did all sorts of things.</p> <p>14 Q. Anything relating to health benefits?</p> <p>15 A. No.</p> <p>16 Q. I think we can do without the Air Force</p> <p>17 schools. Let me ask you this question. Right now</p> <p>18 you're an administrator for the union trust fund.</p> <p>19 Correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Did you do some training before you took</p> <p>22 that position?</p>	<p style="text-align: right;">Page 25</p> <p>1 worked for a company called KSI at the Intel job</p> <p>2 site. I took that just prior to taking this</p> <p>3 present job.</p> <p>4 Q. The present job is the administrator of</p> <p>5 the trust fund, correct?</p> <p>6 A. Correct.</p> <p>7 Q. How did you learn of that job?</p> <p>8 A. The prior administrator had the job for</p> <p>9 an excess of 12 to 14 years. He was going to</p> <p>10 retire. He was 72. The job got published and I</p> <p>11 interviewed for it.</p> <p>12 Q. When you say the job got published?</p> <p>13 A. A letter was sent to every individual in</p> <p>14 the union.</p> <p>15 Q. What time period are we talking about</p> <p>16 now?</p> <p>17 A. 2002.</p> <p>18 Q. This person who had the job, that's</p> <p>19 William Keogh?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know where Mr. Keogh is now?</p> <p>22 A. Retiring and enjoying life.</p>

Charles Hannaford

December 29, 2005

Cambridge, MA

<p style="text-align: right;">Page 130</p> <p>1 of the person I was thinking of. Elaine Mackay 2 and Patty Keogh. 3 Q. Is there some sort of circulation of the 4 paper within the office? 5 A. When I first came in I wanted everybody 6 to get familiar with certain issues. If I see a 7 particular thing I started sending it around. When 8 I first saw that article in the Wall Street 9 Journal about the New York attorney suing Express 10 Scripts I did not send that around, but it gave me 11 pause for thought. Then after that we saw this 12 and so I just sent it around for FYI, for your 13 information. 14 Q. The article about the New York Attorney 15 General would have been prior to this time? 16 A. Yes. 17 Q. Do you recall how long? 18 A. I think it was very shortly before this. 19 Q. Do you still have a copy of that 20 article? 21 A. No. 22 Q. Is there some reason you saved this</p>	<p style="text-align: right;">Page 132</p> <p>1 what's paid". 2 Had you ever heard AWP referred to ain't 3 what's paid prior to this time? 4 A. No. 5 Q. At or around the time of this article or 6 the time that you saw the New York State Attorney 7 General article did you have any discussions with 8 anybody about AWP and whether it represented 9 actual transaction prices or not? 10 A. Amongst our staff we talked about it. 11 Q. When you're saying your staff is it the 12 same people that you just mentioned? 13 A. Correct. 14 Q. Did you ever bring it to the attention 15 of the trustees? 16 A. Yes. 17 Q. What did you say to them? 18 A. Basically, that in a discussion you talk 19 about I just quoted a couple of things from this. 20 They didn't see the whole article. I said, you 21 know, I hope Blue Cross Blue Shield is getting a 22 better deal than we are.</p>
<p style="text-align: right;">Page 131</p> <p>1 particular article in your file? 2 A. No particular reason. I just put it in 3 the file. 4 Q. You say you circulated it to other 5 members of your office? 6 A. Yes. 7 Q. Did you give it to the trustees? 8 A. No. 9 Q. Did you provide it to anybody else? 10 A. No. 11 Q. If you turn to the third page of the 12 document it's a continuation of the article on 13 page A6 of the edition that day. There's a bolded 14 section in the middle "ain't what's paid". You see 15 that? 16 A. Yes. 17 Q. It says "but it's an open secret in the 18 industry that AWP's are often severely inflated, 19 says Robert Garis, a pharmacy professor at 20 Creighton University in Omaha, Nebraska who is 21 studying pricing by PBM's. Some industry veterans 22 joke that AWP ought to stand for quote ain't</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. You mean when you say than we are you 2 mean on the mail order aspect of things? 3 A. Yes. 4 Q. Did you ever ask Blue Cross Blue Shield 5 what kind of deal they were getting on the 6 prescription drug benefit? 7 A. Yes. They had a very -- they didn't 8 have a set fee. I guess it was a sliding fee. I 9 didn't understand all of it. I respected them 10 because they were a large firm that they should be 11 able to exact a better discount for us. 12 Q. Who was the person at Blue Cross Blue 13 Shield of Massachusetts that you had this 14 conversation with? 15 MR. NOTARGIACOMO: Objection. I don't 16 think he ever said he had a conversation. 17 Q. Did you have a conversation with 18 somebody at Blue Cross Blue Shield about this? 19 A. It was Chris May at the beginning, yes. 20 Q. Did you talk to others within Blue Cross 21 Blue Shield of Massachusetts about the meaning of 22 AWP and what kind of --</p>

34 (Pages 130 to 133)

Charles Hannaford

December 29, 2005

Cambridge, MA

<p style="text-align: right;">Page 154</p> <p>1 A. That's correct.</p> <p>2 Q. You have that document?</p> <p>3 A. Yes.</p> <p>4 MR. TRETTER: We'll ask for that.</p> <p>5 Q. Going back to your declaration, which is</p> <p>6 Exhibit Hannaford 012. We'll concentrate on the</p> <p>7 written portion of the exhibit. Paragraph four</p> <p>8 says "Blue Cross Blue Shield of Massachusetts</p> <p>9 compiled claims data for the fund for the period</p> <p>10 1995 through 2003". You see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know why that date range was</p> <p>13 picked?</p> <p>14 A. The lawyers probably asked for it.</p> <p>15 Q. You were just reiterating what the</p> <p>16 lawyers asked for?</p> <p>17 A. Yes.</p> <p>18 Q. There's a reference also in paragraph</p> <p>19 four to something called the "tract 1 defendants".</p> <p>20 Do you know what that means?</p> <p>21 A. Where's the reference?</p> <p>22 Q. In paragraph four.</p>	<p style="text-align: right;">Page 156</p> <p>1 from Blue Cross Blue Shield. The best person to</p> <p>2 ask those specific questions about headings and</p> <p>3 what is in one column and another is that person.</p> <p>4 MR. TRETTER: Okay.</p> <p>5 Q. The patient identifier, do you know what</p> <p>6 that relates to?</p> <p>7 A. No.</p> <p>8 Q. On this printout, as I read it, there</p> <p>9 are 12 discrete patients' numbers. Is it your</p> <p>10 understanding that between 1995 and 2003 the fund</p> <p>11 had only 12 people that were administered these</p> <p>12 tract 1 defendants' drugs?</p> <p>13 A. I don't know.</p> <p>14 Q. How would you know that they even were</p> <p>15 administered these tract 1 drugs?</p> <p>16 A. Blue Cross Blue Shield would have</p> <p>17 supplied this. I would guess this is what it is.</p> <p>18 Q. You're entirely dependent on them?</p> <p>19 A. Absolutely.</p> <p>20 Q. You have no independent knowledge?</p> <p>21 A. No.</p> <p>22 Q. In the column marked "proc-code" there</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Yes.</p> <p>2 Q. What does that mean?</p> <p>3 A. Tract 1 defendants would be those that</p> <p>4 supply the physician administered drugs.</p> <p>5 Q. Have you heard that there are certain</p> <p>6 manufacturers that are on a more accelerated</p> <p>7 schedule than others?</p> <p>8 A. No.</p> <p>9 Q. If you would go now to the Exhibit</p> <p>10 Hannaford 013 there are all these headings. The</p> <p>11 first one is "serv-prov", probably service</p> <p>12 provider, then "service provider tax i.d.", "bill</p> <p>13 provider". Do you know what any of these refer or</p> <p>14 relate to?</p> <p>15 A. Well, service provider I know Blue Cross</p> <p>16 Blue Shield has a number for a particular entity</p> <p>17 that provides a service.</p> <p>18 Q. You think it might be the actual doctor?</p> <p>19 A. Right.</p> <p>20 MR. NOTARGIACOMO: As I'm sure you're</p> <p>21 aware, next week there's going to be a deposition</p> <p>22 of the data individual who produced this material</p>	<p style="text-align: right;">Page 157</p> <p>1 are these J's and Q's and then a number. Do you</p> <p>2 see that?</p> <p>3 A. I see that, yes.</p> <p>4 Q. Do you know what any of that means?</p> <p>5 A. No, I do not.</p> <p>6 Q. Further over to the right there's</p> <p>7 something "charge-ANT allowed-ANT". Do you</p> <p>8 understand what those are?</p> <p>9 A. Yes.</p> <p>10 Q. Let's start with "charge-ANT". What is</p> <p>11 that?</p> <p>12 A. It's what the service provider charged</p> <p>13 for a particular service.</p> <p>14 Q. Or in this case a drug?</p> <p>15 A. Yes.</p> <p>16 Q. What is the allowed amount?</p> <p>17 A. The amount that's allowed under Blue</p> <p>18 Cross Blue Shield.</p> <p>19 Q. Please go back to your declaration,</p> <p>20 Exhibit Hannaford 012, and paragraph three. "My</p> <p>21 understand is that, based on arrangements between</p> <p>22 Blue Cross Blue Shield of Massachusetts and</p>

40 (Pages 154 to 157)



Charles Hannaford

December 29, 2005

Cambridge, MA

<p style="text-align: right;">Page 158</p> <p>1 participating physicians payments made by the</p> <p>2 following four physician administered drugs,</p> <p>3 including those at issues in this lawsuit, are</p> <p>4 based on average wholesale price ("AWP")". What</p> <p>5 is your understanding based on?</p> <p>6 A. My understanding is that Blue Cross Blue</p> <p>7 Shield in their plans do an average wholesale</p> <p>8 price less a discount.</p> <p>9 Q. With the doctor?</p> <p>10 A. With the doctor.</p> <p>11 Q. Where did you get that understanding</p> <p>12 from?</p> <p>13 A. In earlier conversations when they</p> <p>14 talked about price scheduling, as I told you</p> <p>15 earlier, that they have different various</p> <p>16 discounts for different things, but I don't have a</p> <p>17 copy of it and I don't know the specifics.</p> <p>18 Q. As I understand that former testimony,</p> <p>19 we talked about after you read those articles in</p> <p>20 the Wall Street Journal about what AWP meant and</p> <p>21 what it didn't mean?</p> <p>22 A. Right.</p>	<p style="text-align: right;">Page 160</p> <p>1 A. I have no reason to believe that.</p> <p>2 MR. NOTARGIACOMO: For the record, Blue</p> <p>3 Cross Blue Shield is now a party -- well, it's not</p> <p>4 yet entered. The plaintiffs and defendants have</p> <p>5 agreed that Blue Cross Blue Shield will be a party</p> <p>6 to this litigation and their depositions are going</p> <p>7 forward next week to explain exactly how both for</p> <p>8 Blue Cross Blue Shield itself and for pipefitters</p> <p>9 the payments made for the drugs at issue were</p> <p>10 based on average wholesale price.</p> <p>11 Q. Did you know that Blue Cross Blue Shield</p> <p>12 of Massachusetts was going to join this lawsuit?</p> <p>13 A. I just found out.</p> <p>14 Q. Today or yesterday?</p> <p>15 A. Today.</p> <p>16 Q. Let me show you, I'm not going to mark</p> <p>17 it, it's the Third Amended Master Consolidated</p> <p>18 Class Action Complaint. This is a mini version of</p> <p>19 it. Why don't you flip through it. My only</p> <p>20 question to you is whether you've ever seen it.</p> <p>21 A. No.</p> <p>22 MR. NOTARGIACOMO: Let me show you my</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. You had conversation with Chris May</p> <p>2 about the subject?</p> <p>3 A. Right.</p> <p>4 Q. And the net of it was you were satisfied</p> <p>5 that they were sophisticated enough that they knew</p> <p>6 what they were doing, that the fund wasn't paying</p> <p>7 for drugs through Blue Cross Blue Shield. Is that</p> <p>8 accurate?</p> <p>9 A. Yes.</p> <p>10 Q. You, however, have never seen an actual</p> <p>11 fee agreement between either Blue Cross Blue</p> <p>12 Shield and a doctor or Blue Cross Blue Shield and</p> <p>13 a pharmacy?</p> <p>14 A. No.</p> <p>15 Q. So you have no independent basis to</p> <p>16 verify whether or not they're using AWP and how</p> <p>17 much of a discount off of AWP they're using?</p> <p>18 A. Correct.</p> <p>19 Q. Do you have any reason to believe that</p> <p>20 in its contracting with doctors in its network</p> <p>21 Blue Cross Blue Shield is not getting the best</p> <p>22 discount off of AWP that it can get?</p>	<p style="text-align: right;">Page 161</p> <p>1 version. You're probably more familiar with it. I</p> <p>2 don't want to violate any protective order.</p> <p>3 Q. Why don't you just look at the first</p> <p>4 page?</p> <p>5 A. Yes. I've seen this.</p> <p>6 MR. TRETTER: Let the record reflect the</p> <p>7 witness' attorney showed him a large binder that</p> <p>8 have the same documents just in full copy form as</p> <p>9 opposed to minuscrit.</p> <p>10 THE WITNESS: At my age you can't read</p> <p>11 this.</p> <p>12 MR. TRETTER: Referring to the</p> <p>13 minuscrit.</p> <p>14 Q. When did you see that document?</p> <p>15 A. Saw it a couple of weeks ago.</p> <p>16 Q. Was that the first time?</p> <p>17 A. Yes.</p> <p>18 Q. Was it in connection with preparing for</p> <p>19 today's deposition?</p> <p>20 A. Yes.</p> <p>21 Q. Did you see it before the trustees</p> <p>22 approved back in October?</p>

41 (Pages 158 to 161)

# EXHIBIT 34



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

THIS DOCUMENT RELATES TO ALL  
CLASS ACTIONS

Judge Patti B. Saris

**NOTICE OF ERRATA TO THE FOURTH AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT TO COMPLY WITH COURT'S CLASS  
CERTIFICATION ORDER**

TO ALL PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE THAT Health Care For All was inadvertently omitted from the Fourth Amended Consolidated Class Action Complaint (Dkt. Nos. 2171-76 [redacted version] and #2227 [filed under seal - unredacted version]) as a Class 3 representative pursuant to Fed. R. Civ. P. 23(b)(2). Plaintiffs have now included Health Care For All in the Amended Complaint and attach Paragraph 39a to this Notice and revise paragraphs 38 and 39 to add "Appendix A" in place of the blanks erroneously left in the Complaint. Plaintiffs also attach to this Notice an Appendix A (revised) and Appendix B, which were also omitted from the Fourth Amended Consolidated Complaint as filed.

DATED: March 10, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **NOTICE OF ERRATA TO THE FOURTH AMENDED CONSOLIDATED CLASS ACTION COMPLAINT TO COMPLY WITH COURT'S CLASS CERTIFICATION ORDER** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 9, 2005, a copy to LexisNexis File & Serve for Posting and notification to all parties.

By           /s/ Steve W. Berman            
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Medicare Part B context based on published AWP's from Track 1 Defendants. All of BCBSMA drugs that are at issue in the Complaint are identified in Appendix A. BCBSMA contracts to reimburse providers based on fee schedules generated by BCBSMA which fee schedules relating to physician administered drugs are based on the AWP for those drugs.

39. Pipefitter's Local Union 357 ("Pipefitters") is an employee welfare benefit plan and employee benefit plan maintained pursuant to Section 302(c)(5) of the LMRA and is an employee welfare benefit plan established and maintained pursuant to ERISA, for the purpose of providing health benefits to eligible participants and beneficiaries. Pipefitters maintains its principal place of business in Allston, Massachusetts. During the Class Period, Pipefitters has been billed for and paid charges for AWPIDs outside of the Medicare Part B context based on published AWP's. All of Pipefitters drugs that are at issue in the Complaint are identified in Appendix A. During the Class Period Pipefitters contracted with a third-party administrator, BCBSMA, to administer its prescription drug benefit for its beneficiaries. Pipefitter's Reimbursement for AWPIDs is based on fee schedules generated by BCBSMA which fee schedules relating to physician administered drugs are based on the AWP for those drugs.

39a Plaintiff Health Care For All ("HCFA") is a consumer health advocacy organization that has led the fight in Massachusetts to expand access to affordable, quality health care since 1985. HCFA maintains its principal place of business in Boston, Massachusetts. During the Class Period, HCFA's members have been billed for and paid charges for AWPIDs outside of the Medicare Part B context based on published AWP's.

40. In addition, from 2002 through 2003, plaintiff William Barnewolt paid out-of-pocket amounts for Procrit (J&J), Arenesp (Amgen), Furosemide (Abbott), and Infed (Watson). Plaintiff William Barnewolt is represented in this action by plaintiff Bonnie Barnewolt, as a successor in interest to William Barnewolt. The amounts Mr. Barnewolt paid were based on AWP. Mr. Barnewolt was a beneficiary of the UFCW Fund. The UFCW Fund is administered

# EXHIBIT 35

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 MDL No. 1456

4 C.A. No. 01-CV-12257-PBS

5 \* \* \* \* \*  
6 IN RE: PHARMACEUTICAL INDUSTRY \*  
7 AVERAGE WHOLESALE PRICE LITIGATION \*

8 \_\_\_\_\_ \*  
9 THIS DOCUMENT RELATES TO ALL ACTIONS \*

10 \* \* \* \* \*  
11

12 DEPOSITION OF MELISSA D. SHANNON, a witness  
13 called on behalf of Baxter International Inc. and  
14 Baxter Healthcare Corporation, pursuant to the  
15 Federal Rules of Civil Procedure, before Jessica L.  
16 Williamson, Registered Merit Reporter, Certified  
17 Realtime Reporter and Notary Public in and for the  
18 Commonwealth of Massachusetts, at the Offices of  
19 Hagens Berman Sobol Shapiro LLP, One Main Street,  
20 Cambridge, Massachusetts, on Tuesday, May 23, 2006,  
21 commencing at 9:35 a.m.  
22

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 50</p> <p>1 pages of documents were produced in response to 2 this subpoena. 3 Is that your memory that after looking 4 at the subpoena and reviewing the company's -- or 5 Health Care For All's documents, about 100 6 documents were determined to be responsive, 100 7 pages? 8 A. 100 pages sounds about right. I did not 9 count them. 10 Q. Do you know whether you produced to us 11 all documents you determined to be responsive to 12 this subpoena? 13 A. We did. 14 Q. Did you research any documents or not 15 produce any documents on the basis of any 16 privilege? 17 A. No. 18 Q. If you look at Mr. Notargiacomo's 19 letter, he basically says, "enclosed please find 20 all non-objectionable documents." 21 Were there any documents that you 22 determined were responsive to the subpoena, but</p>	<p style="text-align: right;">Page 52</p> <p>1 documents that were produced by the -- by Health 2 Care For All that would have been withheld as a 3 result of any privilege or that were withheld by 4 we thought they were objectionable. I think there 5 are some categories of documents like membership 6 law, you know, information on particular members 7 that arguably could have been covered by the 8 subpoena that we did not produce because we did 9 not feel they were relevant. And that's something 10 I probably should have outlined in response to 11 this letter, but hadn't had a chance to do yet. 12 MR. JACKSON: Okay. Let's do this this 13 way: And obviously I may not agree with you, but 14 if you'll do that and we'll -- at the end of this 15 deposition we might have to preserve the ability 16 to come back and talk to the witness regarding 17 those issues. 18 BY MR. JACKSON: 19 Q. Let's go to Deposition Exhibit Shannon 20 004. 21 (Exhibit Shannon 004, Notice of 22 Errata to the Fourth Amended Consolidated Class</p>
<p style="text-align: right;">Page 51</p> <p>1 you did not produce them because they were somehow 2 objectionable? 3 MR. NOTARGIACOMO: I'm going to object 4 to the question. It's a question better directed 5 at counsel than at the witness, I believe. And I 6 would be happy to talk to you about it off-line. 7 Q. Well, let me have your answer first. 8 A. I agree with that. 9 Q. Meaning? 10 A. Meaning that not that I'm aware of. I 11 would have to discuss with my counsel if he made a 12 determination legally of some documents were 13 privileged or otherwise objectionable to produce. 14 (Exhibit Shannon 003, Letter dated 15 May 16, 2006, marked for identification.) 16 Q. And I'll show you what's been marked as 17 Deposition Exhibit Shannon 003. Deposition 18 Exhibit Shannon 003 is simply a letter from me to 19 your counsel requesting that kind of information. 20 MR. JACKSON: So, Ed, did you keep any 21 documents that you determined were objectionable? 22 MR. NOTARGIACOMO: There were no</p>	<p style="text-align: right;">Page 53</p> <p>1 Action Complaint to Comply With Court's Class 2 Certification Order, marked for identification.) 3 Q. Deposition Exhibit Shannon 004 is a 4 document entitled "Notice of Errata to the Fourth 5 Amended Consolidated Class Action Complaint to 6 Comply With Court's Class Certification Order." 7 Do you see that document? 8 A. I do. 9 Q. Ms. Shannon, have you ever seen this 10 document before? 11 A. Yes. 12 Q. When did you first see this document? 13 A. Yesterday. 14 Q. Can I have you look at the last page of 15 the document, referring particularly to Health 16 Care For All, Paragraph 39a. Do you see that? 17 A. Uh-huh. Yes. 18 Q. The last sentence says, "During the 19 Class Period, HCFA's members have been billed for 20 and paid charges for AWPIDs outside of the 21 Medicare Part B context based on published AWP's." 22 Do you see that?</p>

14 (Pages 50 to 53)

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 54</p> <p>1 A. I do.</p> <p>2 Q. What's your factual basis for making</p> <p>3 that assertion?</p> <p>4 A. I first noticed this sentence yesterday</p> <p>5 afternoon, and I'm not sure how it got in there.</p> <p>6 I don't think it accurately describes our</p> <p>7 relationship with our members in this case.</p> <p>8 Q. Do you have any data regarding whether</p> <p>9 your members have purchased any drugs that are at</p> <p>10 issue in the AWP complaint?</p> <p>11 A. No.</p> <p>12 Q. Do you have any information regarding</p> <p>13 whether any of your members paid any charges for</p> <p>14 the drugs identified in the AWP complaint?</p> <p>15 A. No. We are a plaintiff for injunctive</p> <p>16 relief only.</p> <p>17 Q. Did you undertake any effort, that is,</p> <p>18 Health Care For All, to contact any members, any</p> <p>19 of your members to ask about their drug purchases</p> <p>20 or drug payments?</p> <p>21 A. No. The only outreach we did to members</p> <p>22 on this question was last August/September in</p>	<p style="text-align: right;">Page 56</p> <p>1 Massachusetts to expand access to affordable,</p> <p>2 quality health care since 1985."</p> <p>3 Do you see that sentence?</p> <p>4 A. Yes.</p> <p>5 Q. Do you agree with the facts outlined in</p> <p>6 that sense?</p> <p>7 A. That sentence is accurate.</p> <p>8 Q. Second sentence says, "HCFA maintains</p> <p>9 its principal place of business in Boston,</p> <p>10 Massachusetts."</p> <p>11 Do you see that sentence?</p> <p>12 A. Yes.</p> <p>13 Q. And is that sentence accurate?</p> <p>14 A. Yes.</p> <p>15 Q. You previously testified that you</p> <p>16 thought the third sentence of Paragraph 39a of</p> <p>17 Deposition Exhibit Shannon 004 was not accurate,</p> <p>18 correct?</p> <p>19 A. Only in that we don't know whether our</p> <p>20 members have been billed for and paid charges for</p> <p>21 AWPIDs.</p> <p>22 Q. And, to your knowledge, Health Care For</p>
<p style="text-align: right;">Page 55</p> <p>1 trying to ascertain whether any of our members</p> <p>2 wanted to be named plaintiffs in the lawsuit.</p> <p>3 Q. What kind of outreach did you do?</p> <p>4 A. We sent e-mails out to our member -- to</p> <p>5 our membership and to the database I mentioned</p> <p>6 earlier. We posted something on our website</p> <p>7 asking people if they wanted to participate.</p> <p>8 Q. Anything else?</p> <p>9 A. We did some outreach with other</p> <p>10 organizations to see if they would spread the word</p> <p>11 as well, and we reviewed our help line database to</p> <p>12 see whether there were some seniors who might have</p> <p>13 potentially been interested in the lawsuit.</p> <p>14 Q. Did anyone express interest in response</p> <p>15 to that, quote-unquote, outreach?</p> <p>16 A. Some people expressed interest, but no</p> <p>17 one turned out to be a plaintiff in the lawsuit.</p> <p>18 Q. Let me refer you back now to Paragraph</p> <p>19 39a of Deposition Exhibit Shannon 004. The first</p> <p>20 sentence states, "Plaintiff Health Care For All</p> <p>21 ('HCFA') is a consumer health advocacy</p> <p>22 organization that has led the fight in</p>	<p style="text-align: right;">Page 57</p> <p>1 All did nothing to attempt to confirm that,</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Why is that?</p> <p>5 A. I just became aware of this sentence</p> <p>6 yesterday and because we're plaintiffs for</p> <p>7 purposes of injunctive relief only, so we weren't</p> <p>8 concerned with the drug use or payment history of</p> <p>9 our members, and we don't ever ask those questions</p> <p>10 in the routine course of advocacy with our</p> <p>11 members.</p> <p>12 Q. And you say your -- Health Care For All</p> <p>13 is only interested in injunctive relief only; is</p> <p>14 that correct?</p> <p>15 A. In this case, we're a plaintiff in this</p> <p>16 track of this lawsuit for injunctive purposes</p> <p>17 only.</p> <p>18 Q. So Health Care For All is not seeking</p> <p>19 any damages in this case?</p> <p>20 A. That's correct.</p> <p>21 Q. Since coming to Health Care For All,</p> <p>22 have you had an occasion to do any research</p>

15 (Pages 54 to 57)



Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 58</p> <p>1 regarding the federal government's knowledge 2 regarding drug pricing, particularly as it relates 3 to AWP? 4 A. Somewhere along the way I learned in a 5 very cursory way that Medicare was no longer using 6 AWP, but I don't recall where I learned that, and 7 I don't recall any real details associated with 8 that piece of information. 9 Q. Have you ever looked at the Medicare 10 Modernization Act? 11 A. I have. 12 Q. Does that help you refresh your memory 13 about how Medicare is no longer reimbursing based 14 upon AWP? 15 A. No. 16 Q. I presume therefore you haven't 17 researched or read all of the federal government's 18 information that's publicly available regarding 19 AWP or the definition of AWP or the use of AWP in 20 the Medicare system since the '60s? 21 A. That's correct. If I have, I don't 22 recall reading anything about that.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Were you aware of that? 2 And when you used the word "track," were 3 you referring to Track 1 or Track 2 or -- 4 A. Track 1, yes. 5 Q. You were referring to Track 1. 6 So by that -- 7 A. Only because I wasn't making any 8 assumptions about our involvement in future 9 tracks. 10 Q. Okay. Let me go back and ask a few 11 questions just to make this a little cleaner. 12 I asked you earlier about the 13 allegations contained in Paragraph 39a of 14 Deposition Exhibit Shannon 004? 15 A. Yes. 16 Q. And the last sentence of which you said 17 was inaccurate? 18 A. Yes -- 19 Q. Now -- 20 A. -- to my knowledge. We don't have 21 knowledge about that. That may be an accurate 22 sentence, but we don't have knowledge enough to</p>
<p style="text-align: right;">Page 59</p> <p>1 MR. NOTARGIACOMO: When you get a 2 chance, can we take a very quick break? 3 MR. JACKSON: Sure. We can go off the 4 record. 5 (Recess taken.) 6 MR. JACKSON: Let's go back on the 7 record. 8 BY MR. JACKSON: 9 Q. Ms. Shannon, is it okay if I refer to 10 you by Ms. Shannon? 11 A. Yes. You can call me by my first name, 12 if you prefer. 13 Q. You used the word in an answer or two 14 ago, "track." When you used the word "track," 15 what were you referring to? 16 A. Can you remind me of the context I used 17 it in? 18 Q. Well, let me ask it a different way. 19 Were you aware that the Court in the AWP 20 litigation has broken this case into a Track 1 and 21 Track 2? 22 A. Yes.</p>	<p style="text-align: right;">Page 61</p> <p>1 say whether that was true or not. 2 Q. And you, to your knowledge, Health Care 3 For All has spoken to none of its members about 4 drug purchases or drug sales or drug 5 reimbursement? 6 A. That's correct, although we have -- some 7 of our members have agreed to be plaintiffs in 8 other lawsuits, and therefore I have talked to 9 some members about their use of prescription drugs 10 related to those other lawsuits. 11 Q. But none relating to the AWP litigation? 12 A. That's correct. 13 Q. Now, does your answer to this question 14 supply whether we're talking about Track 1 15 defendants and Track 1 drugs or Track 2 defendants 16 and Track 2 drugs? 17 A. I assume that it does, but I know -- you 18 know, I'm not a lawyer in a litigation context, 19 and there may be -- the situation may be very 20 different by the time we get to Track 2. I don't 21 know whether -- what's going to happen in Track 2 22 is all I meant to say. I wasn't meaning to say</p>

16 (Pages 58 to 61)

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 94</p> <p>1 additional consumer groups.</p> <p>2 Q. Okay. If you look, attached to the</p> <p>3 letter then are several pages, fact sheets,</p> <p>4 several fact sheets. Were all of these provided</p> <p>5 to you by PAL?</p> <p>6 A. Yes.</p> <p>7 (Exhibit Shannon 009, E-mail dated</p> <p>8 August 30, 2005, marked for identification.)</p> <p>9 Q. I show you what's been marked as</p> <p>10 Deposition Exhibit Shannon 009. Deposition</p> <p>11 Exhibit Shannon 009 appears to be an August 30,</p> <p>12 2005 e-mail from Renee Markus Hodin to you. Have</p> <p>13 you ever seen this document before?</p> <p>14 A. Yes.</p> <p>15 Q. When did you first see it?</p> <p>16 A. August 30th, 2005.</p> <p>17 Q. Who provided this document to you?</p> <p>18 A. Renee Markus Hodin e-mailed it to me.</p> <p>19 Q. Did you and Renee then discuss the</p> <p>20 document?</p> <p>21 A. We did.</p> <p>22 Q. What was your conversation?</p>	<p style="text-align: right;">Page 96</p> <p>1 but in Massachusetts they were also interested in</p> <p>2 non-Medicare recipients.</p> <p>3 Q. You know, you must have been kind of in</p> <p>4 receive mode, and Renee was telling you about</p> <p>5 what's going on?</p> <p>6 MR. NOTARGIACOMO: Objection. You can</p> <p>7 answer the question.</p> <p>8 Q. Is that accurate?</p> <p>9 A. Yes.</p> <p>10 Q. The next paragraph then says, "PAL needs</p> <p>11 your help to identify individuals on Medicare who</p> <p>12 have paid for certain drugs that are administered</p> <p>13 in a doctor's office or in a hospital."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you and Renee discuss that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did you then attempt to identify</p> <p>19 individuals on Medicare, that is, Health Care For</p> <p>20 All?</p> <p>21 A. Yes, we attempted to identify people on</p> <p>22 Medicare and people not on Medicare.</p>
<p style="text-align: right;">Page 95</p> <p>1 A. I called her and asked her for more</p> <p>2 information. I honestly can't remember whether we</p> <p>3 discussed it shortly prior to my receiving this e-</p> <p>4 mail or shortly afterwards.</p> <p>5 Q. If you look at the second paragraph, it</p> <p>6 says, "Recently, the Judge in this case ruled that</p> <p>7 the case can go forward, but only if certain types</p> <p>8 of individuals step forward to be added as</p> <p>9 plaintiffs in the case."</p> <p>10 Did you and Renee discuss that list?</p> <p>11 A. We discussed that issue. I don't know</p> <p>12 if we did it -- I don't know if I highlighted this</p> <p>13 sentence and asked her about it, but we discussed</p> <p>14 what types of plaintiffs were needed for the</p> <p>15 lawsuit.</p> <p>16 Q. And what types of plaintiffs were needed</p> <p>17 for the lawsuit?</p> <p>18 A. Two types of plaintiffs, primarily</p> <p>19 nationwide. It was a little bit of a tricky</p> <p>20 situation because they were communicating with</p> <p>21 groups nationwide about identifying Medicare Part</p> <p>22 B recipients who may have taken the subject drugs,</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. And how did you do that?</p> <p>2 A. By -- as I mentioned earlier, we sent an</p> <p>3 e-mail out to our members and other people in our</p> <p>4 database. We posted it on our website, and we</p> <p>5 reached out to groups like AARP, Mass. Senior</p> <p>6 Action Coalition and other senior advocacy</p> <p>7 organizations that we work with.</p> <p>8 Q. But none of your individual members,</p> <p>9 none of the Health Care For All members?</p> <p>10 A. We did send an e-mail to them. I didn't</p> <p>11 discuss drug use with any members in particular.</p> <p>12 Q. The next paragraph says, "Because the</p> <p>13 AWP case is one of the most important challenges</p> <p>14 to drug company greed going on in this country</p> <p>15 today, PAL attorneys are making grants available</p> <p>16 to certain groups that can help identify people</p> <p>17 who might be eligible to join the case. Health</p> <p>18 Care For All has been selected as a possible grant</p> <p>19 recipient because of its past involvement in PAL</p> <p>20 and its ability to mobilize potential plaintiffs."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p>

25 (Pages 94 to 97)

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 98</p> <p>1 Q. Did you have a conversation with Renee 2 about what he meant by "grants"? 3 A. Yes. 4 Q. What did he say? 5 A. What -- she. 6 Q. What she meant, I'm sorry. 7 A. She told me that there would be money 8 available to help us cover the costs of these 9 types of outreach efforts which can be pretty 10 labor-intensive. 11 Q. How much money was available? 12 A. We ended up receiving \$10,000. 13 Q. Who did you receive \$10,000 from? 14 A. The money came through PAL from Hagens 15 Berman. 16 Q. When did that occur? 17 A. I don't know exactly when the money was 18 received. I assume it would be within a month or 19 two of this e-mail. 20 Q. Did Hagens Berman write a check to PAL 21 and PAL write a check to you? 22 A. You would have to ask our CFO that</p>	<p style="text-align: right;">Page 100</p> <p>1 identification.) 2 Q. Let me show you what's been marked as 3 Deposition Exhibit Shannon 010. 4 MR. JACKSON: I only have one copy of 5 that, Ed. 6 Q. Deposition Exhibit Shannon 010 has a 7 Bates number of 000056, bottom right-hand corner. 8 Do you see that? 9 A. I do. 10 Q. Was this produced from Health Care For 11 All's records? 12 A. Yes. 13 Q. Is this your handwriting? 14 A. It is. 15 Q. At the top it says "AHP Report"? 16 A. Yeah, totally unrelated. 17 Q. Okay. How about the next -- underneath 18 the line it says "Renee" and "AWP"? 19 A. Yeah. Just to be clear, this was 20 probably from a note pad I kept at my desk. The 21 AHP information wasn't very important, so when I, 22 you know, ripped off this page of the note pad and</p>
<p style="text-align: right;">Page 99</p> <p>1 question. 2 Q. Did you -- 3 A. I didn't see any checks or -- you know, 4 I wasn't party to any money being changed hands 5 (sic) except to write a proposal and to lead the 6 outreach effort. 7 Q. But you believe that \$10,000 was paid to 8 Health Care For All? 9 A. I do. 10 Q. The next sentence says, "I will be 11 calling you later today to discuss this proposal 12 in further detail and to talk about your ideas for 13 reaching out to your constituents over the coming 14 month." 15 Did you and Renee have this 16 conversation? 17 A. We did. 18 Q. Was it that day? 19 A. Probably, yes. Things were moving very 20 quickly at that point in time. 21 (Exhibit Shannon 010, Handwritten 22 document, Bates No. AWP-HCFA-000056, marked for</p>	<p style="text-align: right;">Page 101</p> <p>1 put it into my AWP file, AHP refers to associated 2 health plans which is a totally unrelated subject 3 I work on. 4 Q. Is that your practice when you take 5 notes regarding a matter, that you'll rip it off 6 your pad and put it in a file? 7 A. Yes, if I think it's something important 8 that I wouldn't naturally remember. 9 Q. I'm going to try to read some of your 10 handwriting, and let me know if I'm wrong. And 11 there will be times when I ask you to read it. 12 It's much better than mine, I might say. 13 A. It's pretty bad. 14 Q. It says, "AWP - HCFA was a plaintiff in 15 2001. Medicare switched to ASP." 16 What's that mean? 17 A. I don't know. I don't remember. That 18 Medicare moved away from AWP to another mechanism 19 to determine price, I assume, but I don't recall 20 what ASP stands for. 21 Q. Is this the information that you had 22 prior to your call with Renee, or is this</p>

26 (Pages 98 to 101)

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 102</p> <p>1 information that Renee provided to you during your 2 call?</p> <p>3 A. A combination of both. I don't think 4 that was the first time I had been told that 5 Medicare switched away from AWP, but, you know, 6 she may have been reminding me of some things and 7 that's why I was writing them down.</p> <p>8 Q. Okay. The next says, "AWP" -- can you 9 read the next line for me?</p> <p>10 A. I think that that says, "AWP is a faulty 11 price system, causing people to overpay."</p> <p>12 Q. Okay. And is that --</p> <p>13 A. And just for the record, this is me 14 probably paraphrasing what I'm hearing from Renee.</p> <p>15 Q. Understand. That was going to be my 16 question.</p> <p>17 A. Okay. I don't know that she used those 18 words. You know, she probably used many more 19 words, and I was taking short notes.</p> <p>20 Q. Okay. The next line says, "Judge 21 changed the class." What's the word after that?</p> <p>22 A. "Particularly," and then I didn't finish</p>	<p style="text-align: right;">Page 104</p> <p>1 newspaper, newsletter, special meetings, phone 2 banking. Looking for extraordinary effort."</p> <p>3 Q. Keep reading, and then we'll come back 4 and ask you about that.</p> <p>5 A. "As many plaintiffs as possible. 6 Medicare Part B drugs, cancer drugs mostly. All 7 or part of 20 percent co-pay, could be in doctor's 8 office or hospital." The word "Taxol" is written 9 there, T-A-X-O-L. I'm not sure why. And "Seniors 10 or disabled."</p> <p>11 Q. Now, going back up to where it says 12 "Hagens Berman made dollars available. 10,000 45 13 to 60 days of work," was there some specific task 14 that Hagens Berman asked Health Care For All to 15 perform for the \$10,000?</p> <p>16 A. No. I was encouraged by Renee to write 17 an application to receive the monies outlining 18 what we thought we could do to reach out to find 19 potential plaintiffs in a lawsuit.</p> <p>20 Q. Did you do that?</p> <p>21 A. Yes.</p> <p>22 Q. Did you send that document to Renee or</p>
<p style="text-align: right;">Page 103</p> <p>1 that thought.</p> <p>2 Q. Okay. What's the next line say?</p> <p>3 A. "Hagens Berman made money available."</p> <p>4 Q. Okay. Can you continue to read that 5 paragraph for me just to make sure, and then I'll 6 come back and ask you about it.</p> <p>7 A. "Hagens Berman made money available. 8 \$10,000 45 to 60 days of work - supervision." 9 I assume that implies that I'll be 10 supervising the -- that I would be responsible for 11 supervising the outreach team.</p> <p>12 Q. You, Melissa?</p> <p>13 A. Me, Melissa.</p> <p>14 Q. Okay.</p> <p>15 A. "What could groups do outside the norm 16 to reach out to plaintiffs as possible." 17 I think that means possible plaintiffs.</p> <p>18 Q. Okay. Keep reading, if you would.</p> <p>19 A. Some ideas at -- it doesn't say "some 20 ideas" there --</p> <p>21 Q. But --</p> <p>22 A. -- but just what it says here, "Ads in</p>	<p style="text-align: right;">Page 105</p> <p>1 to Hagens Berman?</p> <p>2 A. I sent it to Renee. I believe she sent 3 it on to Hagens Berman, and we did produce it.</p> <p>4 Q. For the record, I don't think I've seen 5 any proposal, but we'll go through the documents, 6 and if you see it, what you think is the proposal, 7 that would be great.</p> <p>8 You think you collected it during your 9 collection process?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me about the document? Is 12 it two pages? Is it 22 pages? What can you 13 remember?</p> <p>14 A. It's two pages, or three, something in 15 that neighborhood.</p> <p>16 Q. And in that document did you outline 17 what it is Health Care For All proposed to do?</p> <p>18 A. Yes.</p> <p>19 Q. And can you describe basically what it 20 is Health Care For All proposed to do?</p> <p>21 A. Sure. We proposed to reach out to our 22 members, to reach out to advocacy groups that we</p>

27 (Pages 102 to 105)

Shannon, Melissa D.

May 23, 2006

Cambridge, MA

<p style="text-align: right;">Page 178</p> <p>1 Q. Pearson?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you know what that person was asking</p> <p>4 about?</p> <p>5 A. He had taken albuterol and had paid for</p> <p>6 some of it out of pocket. I thought he might</p> <p>7 qualify as a plaintiff.</p> <p>8 Q. Did he?</p> <p>9 A. No.</p> <p>10 Q. Why; do you know?</p> <p>11 A. Because it wasn't physician-</p> <p>12 administered.</p> <p>13 (Exhibit Shannon 029, E-mail dated</p> <p>14 April 26, 2006, Bates Nos. AWP-HCFA-000059 - 82,</p> <p>15 marked for identification.)</p> <p>16 Q. Let me show you what's been marked as</p> <p>17 Deposition Exhibit Shannon 029. Deposition</p> <p>18 Exhibit Shannon 029 was produced to us by Health</p> <p>19 Care For All in response to the subpoena. This is</p> <p>20 Bates pages 000059 through 82. Have you seen this</p> <p>21 document before?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 A, which is the third page of the document, "Areas</p> <p>2 of Inquiry." We discussed Health Care For All's</p> <p>3 structure, history, membership and funding, but</p> <p>4 you produced no documents relating to that; is</p> <p>5 that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And if you turn the page, we asked for</p> <p>8 information relating to prices paid by Health Care</p> <p>9 For All, its members --</p> <p>10 A. Sorry, what number?</p> <p>11 Q. 13, I'm sorry.</p> <p>12 A. You might have said that. Okay.</p> <p>13 Q. Prices paid by Health Care For All, its</p> <p>14 members or anyone else for prescription drugs, and</p> <p>15 you produced none of that information, correct?</p> <p>16 A. That's correct. We don't collect that</p> <p>17 information.</p> <p>18 Q. And you haven't collected that</p> <p>19 information for purposes of this litigation as</p> <p>20 well?</p> <p>21 A. That's correct.</p> <p>22 Q. And just to make sure, you didn't</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. What is this document?</p> <p>2 A. There's an organization called a</p> <p>3 National Legislative Association on Prescription</p> <p>4 Drug Pricing run out of Vermont, and the woman who</p> <p>5 runs it, Sharon Treat, sends out a weekly e-mail</p> <p>6 of news in the field of prescription drug pricing,</p> <p>7 development in state legislation and some</p> <p>8 information about lawsuits, mostly state</p> <p>9 legislation, or developments in the different</p> <p>10 states.</p> <p>11 Q. And by this was she just forwarding</p> <p>12 information, kind of random related information</p> <p>13 that they would track routinely?</p> <p>14 A. Yes.</p> <p>15 Q. Did you and she have any conversation</p> <p>16 about the AWP litigation in response to this?</p> <p>17 A. None at all.</p> <p>18 Q. Have you ever?</p> <p>19 A. I've never spoken with her about the AWP</p> <p>20 litigation.</p> <p>21 Q. All right. Let me return your attention</p> <p>22 to Exhibit Shannon 001, the subpoena, Attachment</p>	<p style="text-align: right;">Page 181</p> <p>1 contact and ask for your members' information</p> <p>2 regarding drugs used or how they were -- whether -</p> <p>3 - how any paid for their drugs or whether there</p> <p>4 was any reimbursement, correct?</p> <p>5 A. Unless they were a plaintiff in a</p> <p>6 different lawsuit, no.</p> <p>7 Q. But as to the AWP litigation, the</p> <p>8 answer's no?</p> <p>9 A. That's correct.</p> <p>10 Q. No. 21 -- I'm sorry, No. 18, as to</p> <p>11 information regarding the injury suffered by</p> <p>12 Health Care For All, you've produced no documents</p> <p>13 relating to that. How has Health Care For All</p> <p>14 been injured as a result of the complaints in the</p> <p>15 AWP litigation?</p> <p>16 A. Health Care For All itself doesn't --</p> <p>17 isn't claiming any damages and doesn't have any.</p> <p>18 We are concerned --</p> <p>19 Q. Doesn't have any injury?</p> <p>20 A. Any injury.</p> <p>21 Q. Okay.</p> <p>22 A. As an organization we're concerned, as I</p>

46 (Pages 178 to 181)

# **EXHIBIT 36**





UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESAL PRICE LITIGATION )

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

THIS DOCUMENT RELATES TO ALL )  
CLASS ACTIONS )  
01-CV-12257-PBS AND 01-CV-339 )

Judge Patti B. Saris

Chief Magistrate Judge Marianne B. Bowler

**[PROPOSED] ORDER GRANTING PLAINTIFFS'**  
**MOTION FOR CLASS CERTIFICATION**

Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23, for an order certifying a class in this action. Having considered the submissions of the parties and the record in this case, IT IS HEREBY ORDERED as follows:

1. Plaintiffs' motion for class certification is GRANTED as to all claims asserted in the Amended Master Consolidated Complaint ("AMCC").

2. The Court certifies the following Classes:

**Medicare Part B Co-Pay Class.**

All persons or entities who made a co-payment for a Medicare Part B covered AWPID manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, and the Schering Plough Group.<sup>1</sup> Excluded from the Class are those who make flat co-pays and those whose co-pay was reimbursed by an insurer or other third party.

<sup>1</sup> These "groups" are defined in the AMCC.

**Third-Party and Co-Payor Class.**

Third Party Payors who make reimbursements for any AWPID manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, and the Schering Plough Group under contracts with persons or entities that provide pharmaceutical benefits, based on contracts that expressly use AWP as a pricing standard. Included within the Class are individual payors who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) for an AWPID that was based upon use of AWP as a pricing standard.

**RICO Subclass.**

Third-Party Payors who made reimbursements for any AWPID manufactured by AstraZeneca, the BMS Group, the Johnson & Johnson Group, the GSK Group, or the Schering Plough Group under contracts with any of the following PBMs, Caremark, AdvancePCS, Express Scripts and Medco (or their predecessors), where the contracts with the PBMs expressly use AWP as a pricing standard.

3. The Court certifies a RICO Subclass under Count II of the AMCC (violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964 ["RICO"], Count IV of the AMCC (violation of State Consumer Protection Laws) and under Count IX (The Law of Civil Conspiracy).

4. The Court also certifies a Medicare Part B Co-Pay Class and Third-Party and Co-Payor Class under Count IV (State Consumer Protection Laws). The Court will apply the state law of each Defendant's home state. The parties will report to the Court as to what states are home states and such states will be identified in the notice sent to the Class.

5. Excluded from these classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the Individual Defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or





which is related to, or affiliated with, any of the defendants; and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party and governmental entities.

6. The Class Period is 1991 to the present.

7. The Court also certifies the Plaintiffs as Class Representatives. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as co-lead counsel: Hagens Berman LLP, Spector Roseman & Kodroff P.C., Hoffman & Edelson, The Wexler Firm, Hein Mills & Olson.

8. Co-lead counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form of notice to be sent to members of the Class. Defendants may file any comments to the notice within 15 days and Plaintiffs may reply 15 days after.

9. The Court approves the notice program prepared by Kinsella/Novak. Defendants shall prepare and submit to the Court and to counsel for the Plaintiffs within 30 days from the date of this Order a list of names and addresses of all Class members who can be identified with diligent effort.

DONE IN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

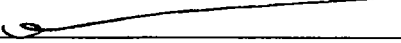
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HON. PATTI B. SARIS  
United States District Court



### CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on September 3, 2004, a copy to Verilaw Technologies for Posting and notification to all parties

By   
Steve W. Berman  
**HAGENS BERMAN LLP**  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
(206) 623-7292

# **EXHIBIT 37**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESAL PRICE LITIGATION )

MDL No. 1456

THIS DOCUMENT RELATES TO )  
ALL CLASS ACTIONS )

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

Chief Magistrate Judge Marianne B. Bowler

**[PROPOSED] ORDER GRANTING PLAINTIFFS'  
AMENDED MOTION FOR CLASS CERTIFICATION**

Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23, for an order certifying a class in this action. Having considered the submissions of the parties and the record in this case, IT IS HEREBY ORDERED as follows:

1. Plaintiffs' amended motion for class certification is GRANTED as to all claims asserted in the Amended Master Consolidated Complaint ("AMCC").
2. The Court certifies the following Classes with respect to AWPIDs manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, and the Schering-Plough Group:

**Physician-Administered Drugs Class (Medicare Part B Co-Pay  
and Private System Physician-Administered Drugs)**

All persons or entities in the United States and its territories who (i) paid all or a portion of the co-insurance under Medicare Part B for an AWPID during the Class Period, and/or (ii) reimbursed another for a physician-administered AWPID under a contract that expressly uses AWP as a pricing standard, along with all



individual persons who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) under such contracts for such AWPIDs, during the Class Period. Excluded from the Class are those who make flat co-pays and those whose co-pay was reimbursed by an insurer or other third party.

**Self-Administered and Specialty Pharmacy Drugs Class  
(Third-Party and Co-Payor Class for Self-Administered  
Drugs)**

All persons or entities in the United States and its territories who reimbursed another for any self-administered AWPID, or for any AWPID which was distributed through a specialty pharmacy, under a contract that expressly uses AWP as a pricing standard, along with all individual persons who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) under such contracts for such AWPIDs. Excluded from the Class are those who make flat co-pays and those whose co-pay was reimbursed by an insurer or other third party.

The foregoing class is further subdivided into the following subclasses:

- (a) brand name sub-class; and
- (b) generic drug sub-class

**RICO Class for Self-Administered and Specialty Drugs**

All persons or entities in the United States and its territories who reimbursed another for any self-administered AWPID, or for any AWPID which was distributed through a specialty pharmacy, under a contract with Caremark, AdvancePCS, Express Scripts and/or Medco (or their predecessors), which contract expressly uses AWP as pricing standard, along with all individual persons who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) under such contracts for such AWPIDs. Excluded from the Class are those who make flat co-pays and those whose co-pay was reimbursed by an insurer or other third party.

The foregoing class is further subdivided into the following subclasses:

- (a) brand name sub-class; and
- (b) generic the sub-class



3. The Class Period is January 1991 to the present.

4. Excluded from these classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the Individual Defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is related to, or affiliated with, any of the defendants; and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party and governmental entities with respect to claims asserted for governmental damages.

5. Plaintiffs seek certification of the RICO Class for Self-Administered and Specialty Drugs under Count II of the AMCC (Violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964 ["RICO"]), and under Count IX (The Law of Civil Conspiracy).

6. Plaintiffs seek certification of the Physician-Administered Drugs Class, and Self-Administered and Specialty Pharmacy Drugs Class under Count IV of the AMCC (Violation of State Consumer Protection Laws). The Court will apply the state law of each Defendants' home state. The parties will report to the Court as to what states are home states and such states will be identified in the notice sent to the Class.

7. The Court also certifies the Plaintiffs as Class Representatives. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as co-lead counsel: Hagens Berman LLP, Spector Roseman & Kodroff P.C., Hoffman & Edelson, The Wexler Firm, and Hein Mills & Olson.



8. Co-lead counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form of notice to be sent to members of the Class. Defendants may file any comments to the notice within 15 days and Plaintiffs may reply 15 days after.

9. The Court approves the notice program prepared by Kinsella/Novak. Defendants shall prepare and submit to the Court and to counsel for the Plaintiffs within 30 days from the date of this Order a list of names and addresses of all Class members who can be identified with diligent effort.

DONE IN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
HON. PATTI B. SARIS  
United States District Court



### CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION** to be electronically filed with the Court pursuant to the December 16, 2004 Order and to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 17, 2004 a copy to Verilaw Technologies for posting and notification to all parties.

By                     /s/ Steve W. Berman                    

Steve W. Berman

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